

# **CSXT Exhibit 5**

McGuireWoods LLP  
World Trade Center  
101 West Main Street  
Suite 9000  
Norfolk, VA 23510  
Tel 757.640.3700  
Fax 757.640.3701  
[www.mcguirewoods.com](http://www.mcguirewoods.com)  
Robert W. McFarland  
Direct: 757.640.3716

McGUIREWOODS

[rmcfarland@mcguirewoods.com](mailto:rmcfarland@mcguirewoods.com)  
Fax: 757.640.3966

August 18, 2020

**BY EMAIL**

Alan D. Wingfield, Esq.  
[alan.wingfield@troutmansanders.com](mailto:alan.wingfield@troutmansanders.com)  
Michael E. Lacy, Esq.  
[Michael.lacy@troutmansanders.com](mailto:Michael.lacy@troutmansanders.com)  
Massie P. Cooper, Esq.  
[Massie.cooper@troutman.com](mailto:Massie.cooper@troutman.com)  
Troutman Sanders, LLP  
1001 Haxall Point  
Richmond, VA 23219

Elizabeth S. Flowers, Esq.  
[liz.flowers@troutmansanders.com](mailto:liz.flowers@troutmansanders.com)  
John C. Lynch, Esq.  
[john.lynch@troutmansanders.com](mailto:john.lynch@troutmansanders.com)  
Kathleen M. Knudsen, Esq.  
[Kathleen.knudsen@troutman.com](mailto:Kathleen.knudsen@troutman.com)  
Troutman Sanders, LLP  
222 Central Park Avenue, Suite 2000  
Virginia Beach, VA 23462

Monica McCarroll  
[mmccarroll@redgravellp.com](mailto:mmccarroll@redgravellp.com)  
Redgrave LLP  
14555 Avion Parkway, Suite 275  
Chantilly, VA 20151

Thomas Robert Gentry  
[thomas.gentry@skadden.com](mailto:thomas.gentry@skadden.com)  
John Reed Thornburgh, II  
[john.thornburgh@skadden.com](mailto:john.thornburgh@skadden.com)  
Tara Lee Reinhart  
[tara.reinhart@skadden.com](mailto:tara.reinhart@skadden.com)  
Skadden Arps  
1440 New York Avenue, N.W.  
Washington, D.C. 20005-2111

James L. Chapman, IV, Esq.  
[jchapman@cwm-law.com](mailto:jchapman@cwm-law.com)  
W. Ryan Snow, Esq.  
[wrsnow@cwm-law.com](mailto:wrsnow@cwm-law.com)  
Darius K. Davenport, Esq.  
[ddavenport@cwm-law.com](mailto:ddavenport@cwm-law.com)  
David C. Harnett, Esq.  
[dharnett@cwm-law.com](mailto:dharnett@cwm-law.com)  
Crenshaw, Ware & Martin, PLC  
150 West Main Street, Suite 1500  
Norfolk, VA 23510

Re: *CSX Transportation, Inc., et al v. Norfolk Southern Railway Company, et al*  
Civil Action No.: 2:18-cv-00530

Dear Counsel:

I write to follow up on this morning's telephone conference regarding the expiration of the current stay period in this case, which ends tomorrow – Wednesday, August 19. During this call, I laid out a proposed schedule on behalf of my client, CSX Transportation, Inc. ("CSXT"), that allows all parties to conclude fact and expert discovery before the end of the year. While the

August 18, 2020

Page 2

COVID-19 pandemic continues to pose challenges and inject uncertainty into court schedules, it would benefit our clients – and the Court – to put in place a schedule that allows us to move this case forward as best as we can, given the existing limitations. To that end, CSXT proposes the following schedule:

- *Written and Document Discovery.* If a receiving party believes a producing party's responses served to date are deficient, it will notify the producing party in writing by Friday, August 28, so that the parties can meet and confer. If the parties cannot resolve the issues, any motions would be filed by Friday, September 11. This agreement would, in no way, limit the parties' obligations to supplement under the Federal Rules.
- *Depositions.* Although circumstances are continually evolving, we believe that the parties should re-commence depositions in September, remotely by video or with agreed-upon procedures to allow for strict social distancing. Under the circumstances, we believe the default should be that depositions will be taken by remotely to limit the health risk for everyone involved, but can discuss specific exceptions on a case-by-case basis. We propose that Norfolk Southern Railway Company ("NS") and the Norfolk & Portsmouth Belt Line Railroad Company ("NPBL") begin taking depositions on Monday, September 28 and finish all fact depositions no later than Monday, October 26. This time period – a total of 21 business days – is in excess of the 11 business days NS and NPBL had remaining in their fact discovery period when the first joint stay was entered in mid-March. If Judge Leonard grants CSXT's pending motion to reopen depositions and compel additional depositions, CSXT would notice and take those additional depositions during the same period, subject to the same logistical limitations.
- *Expert Deadlines.* Defendants' expert reports would be served no later than seven days following Defendants' last fact witness deposition – that is, Monday, November 2. CSXT's expert will have three weeks after Defendants' report is served to serve its rebuttal report, by Monday, November 23. Expert Depositions would be taken during the week of December 7.
- *Mediation.* We propose the parties work with the Court to schedule a settlement conference in January 2021, ideally with position statements submitted during the week of January 11 and the mediation taking place the week of January 18 or 25, 2021.

This proposed schedule does not contemplate setting other pretrial deadlines – such as for motions for summary judgment – which are more appropriately tied to the new trial date that will be set by the Court.

We look forward to discussing this proposal with you tomorrow, Wednesday, August 19, at 3:30 p.m. Prior to that telephone conference, we will circulate a draft joint motion to extend the deadline for filing a joint status report to the Court until Monday, August 24.

August 18, 2020

Page 3

With best wishes, I am

Sincerely yours,



Robert W. McFarland

RWM:kyw

CC: Benjamin L. Hatch ([bhatch@mcguirewoods.com](mailto:bhatch@mcguirewoods.com))  
J. Brent Justus ([bjustus@mcguirewoods.com](mailto:bjustus@mcguirewoods.com))  
Ashley P. Peterson ([apeterson@mcguirewoods.com](mailto:apeterson@mcguirewoods.com))  
V. Kathleen Dougherty ([vkdougherty@mcguirewoods.com](mailto:vkdougherty@mcguirewoods.com))